

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Application of)

          KRWK CORPORATION, dba       )  
          KOHALA RANCH WATER COMPANY   )

DOCKET NO. 2008-0283

For Review and Approval of its       )  
Proposed Preferential Agricultural   )  
Potable Water Rate and Criteria       )  
for Bona Fide Agribusinesses        )  
Pursuant to Act 169, 2008 Session   )  
Laws of Hawaii, and Other            )  
Ratemaking Matters Including         )  
Without Limitation, Rate Increases,   )  
Revised Rate Schedules and Revised    )  
Rules.                                    )

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DECISION AND ORDER

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DIV. OF CONSUMER ADVOCACY  
DEPT. OF COMMERCE AND  
CONSUMER AFFAIRS  
STATE OF HAWAII

PUBLIC UTILITIES  
COMMISSION

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Docket No. 2008-0283

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) Rules. )  
\_\_\_\_\_ )

DECISION AND ORDER

By this Decision and Order, the commission adopts its Proposed Decision and Order, filed on May 12, 2009, as its Decision and Order in this proceeding. In so doing, the commission: (1) approves an increase of \$336,400, or approximately 20.98 percent over revenues at present rates for KRWC CORPORATION, dba KOHALA RANCH WATER COMPANY ("KRWC" or "Applicant"), based on a total revenue requirement of \$1,939,715 for the 2009 calendar test year, and a rate of return of 8.5 percent; (2) authorizes an across-the-board increase in KRWC's monthly meter charge, monthly water consumption charge, and hydrant rental charge; and (3) authorizes the implementation of a Preferential Agricultural Potable Water Rate.<sup>1</sup>

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<sup>1</sup>The Parties are KRWC and the DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS, DIVISION OF CONSUMER ADVOCACY

I.

Background

On March 25, 2009, the Consumer Advocate filed its Direct Testimonies and Exhibits. Subsequently, by letter dated March 30, 2009, KRWC informed the commission that based on the water utility's review of the Consumer Advocate's Direct Testimonies and Exhibits, it intended to engage in settlement discussions with the Consumer Advocate. By reply letter dated April 2, 2009, the commission instructed the Parties as follows:

In their efforts to reach agreement on a written stipulation, the Parties shall adhere to the following guidelines: (1) the settlement agreement should fully explain and provide the supporting bases (calculations, worksheets, data, and all other evidence) or other rationale to justify and support a commission finding that the proposed revenue requirements (revenues, expenses, rate base, and rate of return) set forth in the stipulation are just and reasonable, including the applicable citations to the docket record; and (2) the revenues, expenses, and rate base amounts agreed-upon by the Parties should be consistent with the test year concept, and utilize a normalized test year period.

Commission's letter, dated April 2, 2009, at 1-2 (footnotes and citations therein omitted).

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("Consumer Advocate"), an ex officio party to this proceeding, pursuant to Hawaii Revised Statutes ("HRS") § 269-51 and Hawaii Administrative Rules ("HAR") § 6-61-62(a). The STATE OF HAWAII, DEPARTMENT OF AGRICULTURE, is a limited participant. See Order Regarding Completed Application and Other Initial Matters, filed on December 8, 2008. On February 27, 2009, the commission denied the motion for an enlargement of time to file a motion to intervene, filed by Kohala By the Sea Community Association, and thus, also dismissed as untimely the movant's motion to intervene. See Order Denying Kohala By the Sea Community Association's Motion to Enlarge Time and Dismissing Motion to Intervene, filed on February 27, 2009.

On April 28, 2009, the Parties jointly filed their Amended and Restated Stipulation of Settlement Agreement in Lieu of [KRWC's] Rebuttal Testimonies.<sup>2</sup>

On May 12, 2009, the commission timely issued its Proposed Decision and Order, as mandated by HRS § 269-16(f), and in response to KRWC's Application, filed on November 12, 2008.<sup>3</sup> The commission recommended approving an increase of \$336,400, or approximately 20.98 percent over revenues at present rates for KRWC, based on a total revenue requirement of \$1,939,715 for the 2009 calendar test year, and a rate of return of 8.5 percent. In so doing, the commission approved Parties' Amended Stipulation. The commission, in approving the Amended Stipulation: (1) authorized an across-the-board increase in KRWC's monthly meter charge, monthly water consumption charge, and hydrant rental charge; and (2) authorized the implementation of a Preferential Agricultural Potable Water Rate, in accordance with Act 169, 2008 Session Laws of Hawaii ("Act 169").<sup>4</sup>

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<sup>2</sup>Amended and Restated Stipulation of Settlement Agreement in Lieu of Rebuttal Testimonies; Exhibits KRWC-A to KRWC-E; Attachments 1 to 7; Attachment PUC-IR-101; and Certificate of Service, filed on April 21, 2009 (collectively, "Amended Stipulation").

<sup>3</sup>Application; Exhibits KRWC 1 to KRWC 12; Exhibit KRWC-T-100; Attachment 1 to 3; Verification; and Certificate of Service, filed on November 12, 2008 (collectively, "Application").

<sup>4</sup>Act 169, which took effect in June 2008: (1) establishes a policy of providing preferential potable water rates for qualified agricultural activities; and (2) provides that such preferential agricultural rates, if approved by the commission, are subject to subsidization by the potable water rates charged to other customers of the water utility.

The commission, by its Proposed Decision and Order, also instructed:

1. KRWC to promptly file its revised tariff sheets and rate schedules for the commission's review and approval, including provisions: (A) for verifying that any qualified agricultural user that is assessed the Preferential Agricultural Potable Water Rate continues to meet the criteria set forth in Section 5; and (B) for any agricultural user that no longer qualifies for the subsidized Preferential Agricultural Potable Water Rate, to now be assessed the base consumption rate that is charged to KRWC's base rate customers (the "verification and change in rate provisions");

2. The Parties to timely notify the commission as to whether its accepts, in toto, or does not accept, in whole or in part, the commission's Proposed Decision and Order, as mandated by HRS § 269-16(f)(3); and

3. KRWC, for its next rate case proceeding, to: (A) undertake and complete a cost of service study; and (B) comply with the audited financial statement requirement set forth in HAR § 6-61-75(b).

On May 15, 2009, the commission forwarded to the Parties an electronic mail comment received by the commission that same day. Thereafter, by letter dated May 20, 2009, the commission responded to the author of the May 15, 2009 electronic mail comment, and by a copy of such letter,

"request[ed] that KRWC and the Consumer Advocate, by a joint filing, confirm and further explain the information set forth in Section III.H.3 of the Parties' Amended Stipulation."<sup>5</sup>

By letter dated May 18, 2009, KRWC notified the commission that it accepted, in toto, the commission's Proposed Decision and Order. Thereafter, by letter dated May 26, 2009, the Consumer Advocate also notified the commission that it likewise accepted, in toto, the commission's Proposed Decision and Order. On May 26, 2009, the Parties also filed their joint filing, in response to the commission's request. On May 28, 2009, KRWC filed its revised tariff sheets and rate schedules for the commission's review and approval, in compliance with the commission's Proposed Decision and Order. KRWC's revised tariff sheets and rate schedules include the verification and change in rate provisions developed in consultation with the Consumer Advocate.<sup>6</sup>

## II.

### Discussion

The Parties have accepted the commission's Proposed Decision and Order. Accordingly, the Parties are not entitled to a contested case hearing, and HRS § 269-15.5, governing the appeal of commission decisions, does not apply.

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<sup>5</sup>Commission's letter, dated May 20, 2009, at 3 (footnote and text therein omitted).

<sup>6</sup>See KRWC's transmittal letter, dated May 28, 2009, at 1.

The commission hereby adopts its Proposed Decision and Order as its Decision and Order in this proceeding. In addition, the commission finds that KRWC's revised tariff sheets and rate schedules, filed on May 28, 2009, including the provisions that are designed to implement Act 169, comply with the commission's Proposed Decision and Order, and thus, approves said filing.<sup>7</sup>

As a final matter, the commission finds it prudent to include in this Decision and Order the following discussion regarding KRWC's rate base.

In Section III.H.3 of the Amended Stipulation, the Parties state:<sup>8</sup>

**Other Alleged Customer Concerns.**

In its Direct Testimonies, the Consumer Advocate points out that certain customers of Applicant have maintained that the Application sought cost recovery for certain items that may have already been recovered in some other form. As an example, the Consumer Advocate indicated that one allegation related to the belief that certain assets have already been written off for tax purposes. The Consumer Advocate contended

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<sup>7</sup>That said, this rate case proceeding represents the first instance whereby the commission has adopted the procedures and qualifying criteria for the subsidized agricultural user rate. The commission, recognizing that such procedures and criteria constitutes a "work in progress," reserves its right to review and modify, at any time, the tariff sheets which implement the provisions of Act 169.

<sup>8</sup>Docket No. 05-0334 refers to KRWC's 2006 test year rate case, In re KRWC Corp., dba Kohala Ranch Water Co., Docket No. 05-0334. In Docket No. 05-0334, the commission issued Interim Decision and Order No. 23013 on November 3, 2006, and Decision and Order No. 23404 on May 1, 2007. See also Docket No. 05-0334, Order No. 23415, filed on May 4, 2007 (approving KRWC's revised tariff sheets and rate schedules).

that if such an event occurred, this would give rise to the regulatory concern similar to the rebuttable presumption. This presumption involved certain conditions which would suggest that the costs associated with one or more plant items may have already been recovered through other means (i.e., tax write offs, through real estate transactions, etc.). The Consumer Advocate further contended that such items are generally excluded from rate base unless and until the Company can provide sufficient information to rebut that particular presumption. See CA-T-1 (page 81, lines 4 to 16).

Although the Consumer Advocate has not investigated this matter in the instant proceeding, the Consumer Advocate noted that this issue was discussed by Ms. Cheryl Kikuta ("Ms. Kikuta") of the Consumer Advocate's office in Docket No. 05-0334, wherein Ms. Kikuta's analysis indicated that there was no evidence that would support a rebuttable presumption at that time. Similarly, the Consumer Advocate was not aware of any information in this proceeding that would support that presumption at this time either. However, given that it appears that this issue continues to be raised by customers, the Consumer Advocate recommended that Applicant address this matter to assuage customer concerns as soon as possible by including sufficient information to address these concerns in its rebuttal testimony. See CA-T-1 (page 82, lines 3 to 15).

During settlement discussions, however, Applicant confirmed that the costs associated with one or more of its plant items have not already been recovered through other means consistent with Ms. Kikuta's analysis in Docket No. 05-0334. As a result, the Consumer Advocate acknowledges that there is nothing to support a rebuttal presumption at this time and no further action is necessary by Applicant. Thus, in lieu of requiring Applicant to address this matter as part of its rebuttal testimony, the Parties agree that these concerns have been appropriately addressed for this proceeding.

Amended Stipulation, Section III.H.3, at 65-66 (emphasis added).



Thereafter the Parties, by their May 26, 2009 joint filing, confirm and reiterate that no further action is necessary:

In its Supplemental Statement of Position, filed on February 8, 2000, in Docket No. 99-0390, the Consumer Advocate briefly discussed the need to ensure that there would be no efforts to seek any recovery of an acquisition premium, if one were to occur as a result of the transaction whereby Mr. Acree acquired the stock of KRWC. By the analysis offered in that docket, the Consumer Advocate stated, in relevant part, that "it does not appear that Mr. Acree will pay an acquisition premium for the stock of KRWC" but still recommended that the Commission require KRWC and Mr. Acree to record all costs directly or indirectly related to the acquisition of KRWC by Mr. Acree to record all costs directly or indirectly related to the acquisition of KRWC by Mr. Acree and any acquisition premium paid by Mr. Acree in "below-the-line" accounts[.]

As it relates to the presumption that the costs related to the plant might have already been recovered through means other than utility rates or that some benefits have already been received by the current or prior owners from the plant costs, the Parties agree that there is no information that would suggest that the presumption is applicable to KRWC. The creation of KRWC, the transfer to it of Kohala Ranch Water Company's assets, and the issuance of KRWC's stock to Kohala Ranch Water Company was for the sole purpose of facilitating the sale of the stock to Mr. Acree. At the same time that Kohala Ranch Water Company transferred the assets to KRWC Corporation, KRWC's stock was transferred to Mr. Acree. As such, the transaction had no effect on ratepayers. In fact, there are certain assertions or documents provided in past proceedings that could be used to rebut the possible application of the presumption to some of the assets. For instance, Docket No. 5523, which is the proceeding in which the Commission authorized KRWC's Certificate of Public Convenience and Necessity, KRWC's predecessor indicated that it intended to "recoup its investment in the water system through water rates and charges and not from land sales."

Furthermore, in the statement of public offering document that was included as a filing in Docket No. 5523, prospective owners were informed that "the entire water system serving the subdivision . . . will not paid for, in whole or in part, by any lot owner . . . ." These are possible items that could be used to successfully and completely rebut the presumption for any of the assets then reflected on KRWC's records.

To address the concerns raised by one of KRWC's customers, given the Commission's long-standing position that acquisition premium and acquisition transactional costs should not be recoverable from customers since it would establish public policy that is contrary to the public interest, the Parties agree that the converse should not be allowed if and when the price paid in a particular transaction reflects an acquisition discount. Consistent with its position in Docket No. 2006-0437, the Consumer Advocate believes that, all other things being held equal, a discount of the cost of the property when originally put into public service provides no less benefit to ratepayers. The discount merely represents a change in ownership without any decrease in service function to ratepayers. That is, if a utility company cannot recover more than the remaining net book value of the assets when that utility company is acquired for more than that value, it is not equitable to have discounts used to write down the value of the remaining net book value of the assets.

Thus, the Parties confirm the information set forth in Section III.H.3 of the Parties' Amended Stipulation. In addition, the Consumer Advocate further confirms that no further action is necessary pertaining to the concerns that are the subject of Senator Green's May 15, 2009 electronic mail, and that the concerns initially identified and raised as part of the Consumer Advocate's Direct Testimony, filed on March 25, 2009 (CA-T-1, at pages 81-82), have been appropriately addressed in this proceeding.

Parties' joint filing, dated May 26, 2009, at 1-3 (footnotes, text, and citations therein omitted) (emphasis added).

The foregoing discussion regarding KRWC's rate base is hereby made a part of this Decision and Order.

III.

Orders

THE COMMISSION ORDERS:

1. The Proposed Decision and Order, filed on May 12, 2009, is adopted as the commission's Decision and Order in this proceeding.

2. KRWC may increase its rates to produce a total annual revenue increase of \$336,400, or approximately 20.98 percent, as reflected in the schedules attached to the commission's Proposed Decision and Order, representing an increase in KRWC's revenue requirement to \$1,939,715.

3. KRWC's revised tariff sheets and rate schedules, including the provisions that are designed to implement Act 169, are approved, and shall take effect from June 23, 2009. KRWC shall promptly file its new tariff sheets and rate schedules, with the applicable issued and effective dates.

4. The failure to comply with Ordering Paragraph No. 3, above, may constitute cause to void this Proposed Decision and Order, and may result in further regulatory action as authorized by State law.

5. Upon the filing of KRWC's new tariff sheets and rate schedules, with the applicable issued and effective dates, this docket shall be considered closed unless ordered otherwise by the commission.

6. For its next rate case proceeding, KRWC shall:  
(A) undertake and complete a cost of service study; and  
(B) comply with the audited financial statement requirement  
set forth in HAR § 6-61-75(b).

DONE at Honolulu, Hawaii JUN 17 2009.

PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

By Carlito P. Caliboso  
Carlito P. Caliboso, Chairman

By John E. Cole  
John E. Cole, Commissioner

By Leslie H. Kondo  
Leslie H. Kondo, Commissioner

APPROVED AS TO FORM:

Michael Azama  
Michael Azama  
Commission Counsel

2008-0283.laa

CERTIFICATE OF SERVICE

The foregoing order was served on the date of filing by mail, postage prepaid, and properly addressed to the following parties:

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